IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1063 of 2003

to

SPECIAL CIVIL APPLICATIONNo 1072 of 2003

with

SPECIAL CIVIL APPLICATION NOS. 1075 of 2003 to 1083 of 2003, 1088 of 2003 to 1097 of 2003, 1141 of 2003, 1255 of 2003 to 1258 of 2003, 12121 of 2003 to 12126 of 2003, 17120 of 2003 to 17131 of 2003, 17132 to 17142 of 2003, 17143 of 2003 to 17148 of 2003, 17149 of 2003 to 17161 of 2003, 17162 of 2003 to 17170 of 2003.

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRABHUBHAI MORARBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners
MR KAMAL TRIVEDI LD. ADDL. ADVOCATE GENERAL WITH
MS MEETA PANCHAL GOVERNMENT PLEADER for Respondent No. 1-2
MR AJAY R MEHTA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 10/12/2003

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

On 6.12.2003, the group of Special Civil Applications filed by petitioners - original claimants being Special Civil Application Nos. 12121 of 2003 to 12126 of 2003 were notified before us for admission. Considering the challenge made by petitioners in those petitions and on considering the submissions of Mr. A.J. Patel, learned advocate for the petitioners in each matter, it is found that the petitioner in each petition - original claimant had moved this Court for seeking prayer for issuance of writ of mandamus or any other appropriate writ, order or direction to respondents authority to deposit the amount of interest on the aggregate amount of compensation including the solatium and other statutory benefits payable to the petitioners as per law laid down by the Supreme Court of India in the matter of SUNDER VS. UNION OF INDIA, reported in 2001 (3) G.L.H. p.446 and by way of relief in the main petition, the petitioners have sought for direction that respondent No. 1 State to issue required Notification / Resolution / circular or order for payment of amount of interest on the aggregate amount of compensation including solatium and other statutory benefits to the petitioners - claimants and pending the petitions, the petitioners have sought for direction that the respondent Nos. 2 and 3 be directed to deposit the amount of interest on the aggregate amount of compensation including the solatium and other statutory benefits payable to the petitioners as directed by the Apex Court.

The petitioners have also annexed the judgement of this court, in which the group of First Appeals being First Appeal No. 3562 of 2000 to 3575 of 2000 filed by the acquiring body namely Oil & Natural Gas Commission (hereinafter referred as "ONGC" for short) against the award of the Reference Court, where the acquiring body has challenged the award of the District Court granting additional compensation in favour of the respondents claimants and those appeals were finally disposed off as per judgement and award dated 21st December, 2000. The another decision of the Division Bench is also annexed with these petitions dated 19.2.2001 in another group of First Appeals being First Appeal No. 711 of 2001 to 716 of 2001 and the challenge in the First Appeals were at the instance of acquiring body namely ONGC in respect of the Award of the District Court under Section 18 of the Land Acquisition Act. These group of First Appeals were finally disposed off and appeals filed by the acquiring body namely ONGC were allowed partly and the additional compensation fixed on market value of the land be reduced from Rs.17-00 per sq. mtrs. to 13.50ps. per sq. mtrs. and the High Court has accordingly modified the award of the District Court to that extent. As found from the observations made by the Division Bench by recording that acquiring body shall deposit the amount of compensation due and payable as per the award of the High Court within 3 months from the date of judgement and such deposit shall be made separately in each of the Land Reference Cases.

2. Mr. Patel, learned advocate appearing for the petitioners has submitted that in connection with the similar prayer sought by other claimants had also filed several petitions claiming the same reliefs, are pending for final final hearing and already notified before us for final hearing and Mr. Patel has also brought to our notice that similar petitions, which were filed by the other claimants are also pending for admission due to some objection and as those petitions, which are yet to be notified for admission and the other connected Special Civil Application, which are already entertained by the Court by issuing Rule and those Special Civil Applications are very much before the Court for final hearing. He accordingly, prayed that group of Special Civil Application being Special Civil Application No. 12121 of 2003 to 12126 of 2003 be kept along with the other connected matters, which are already on board for final hearing and he has also requested that he will furnish stamp number of the Special Civil Applications filed by him which are pending with the office and sought direction that those petitions also be notified before

the Court and same be dealt with along with the admitted petition for final hearing.

3. Considering the request made by Mr. Patel, Ms. Panchal, learned AGP appearing for the respondent namely Land Acquisition Officer has requested us that so far as final hearing matters are concerned, as per the decision of the Government, learned Additional Advocate General Mr. Kamal Trivedi is appearing in these group of matters as the challenge is in respect of some reply received by the claimants on the legal notice issued by claimants to the acquiring body as well as Land Acquisition Officer. We have directed Mr. Patel to serve copy of all these petitions to Mr. Ajay Mehta, learned advocate who appeared on behalf of acquiring body i.e. ONGC and the fact that Mr. Ajay Mehta has also filed vakalatnama in the petitions, which are already notified for final hearing and also serve copies of the petitions to the office of the Government Pleader. Accordingly, as per our direction, the copies of the petitions being Special Civil Application Nos. 12121 of 2003 to 12126 of 2003 and connected matters with other Special Civil Applications, which were yet to be notified before the Court and copy of each petition was served on Mr. Ajay Mehta, who appeared on behalf of ONGC and Government Pleader, who appeared on behalf of Land Acquisition Officer. In view of our direction, Mr. Patel has also submitted the stamp numbers of the Special Civil Application, which are pending for admission were ordered to be notified before us in view of the consent of the counsel appearing in the matter to dispose off this group of petitions and accordingly, office has circulated those petitions before us today. Copies of each petition were duly served on Mr. Ajay Mehta and to the Government Pleader.

4. As per direction given earlier, Mr.Patel has served advance copy of the petition to Mr.Ajay Mehta as well as to the office of the Government Pleader. While disposing of these petitions Ms. Meeta Panchal, learned Assistant Government Pleader, has brought to our notice that in view of the Circular issued by the Government, a law officer is not to waive service of rule directly. However, considering the challenge made in these petitions and the reply given by the Land Acquisition Officer in respect of the legal notice issued through advocate on behalf of the petitioners, we direct Ms.Panchal, looking to the fact that in other connected petitions Rule is already issued, to waive service of rule on behalf of Land Acquisition Officer. Accordingly Ms.Panchal, as per our direction, waives service of rule

on behalf of Land Acquisition Officer and Mr. Ajay Mehta waives service of rule on behalf of O.N.G.C.

5. As the common question of facts and law has been raised in these petitions and the challenge is only in respect of reply received by each of the claimants in respect of legal notice served to the acquiring body namely ONGC as well as to the Land Acquisition Officer and according to the petitioners, as per the demand made in the legal notice, which was based on the subsequent judgement of the Apex Court, for which, the petitioners were entitled for interest on the aggregate amount and accordingly, the petitioners have approached this court. It is an admitted fact that so far as petitioners are concerned, their lands were acquired for the public purpose under Notification of the Land Acquisition Act and all the steps were followed, which is required to be followed under the Land Acquisition Act. It is also an admitted fact that Land Acquisition Officer has declared his award and fixed the market value of the land and being aggrieved by the said award passed by the Land Acquisition Officer, the claimants had approached higher forum by way of Reference before the District Court for seeking additional amount of compensation, as according to the claimants, the fixation of the price of the land under Award of Land Acquisition Officer does not reflect the market value of the land. These references under Section 18 of the Land Acquisition Act were considered by the Reference Court namely the District Court and the District Court has after appreciating the evidence led before him, enhanced the market value of the land by granting additional compensation in favour of the petitioners - claimants and also awarded solatium and interest as provided under the Land Acquisition Act. We are not referring to the details about the decision of the Reference Court as well as the High Court. It is an admitted fact that against the Award of the District Court under Section 18 of the Land Acquisition Act, it is the acquiring body namely ONGC has challenged the said award of the District Court by preferring First Appeals. In the First Appeals, it is the contention of the acquiring body that the District Court was not right in enhancing the market value of the land and accordingly, challenged the additional amount granted in favour of the claimants as well as other benefits granted under the Land Acquisition Act. These appeals filed by the ONGC were finally disposed off by the Court after hearing the counsel appearing for the claimants and Government Pleader. These First Appeals, as referred to earlier, a copy of judgement which is annexed to the petition, High Court has allowed the appeals partly and reduced the

amount of compensation. It is also an admitted fact and we have already observed earlier that Division Bench has also observed that acquiring body had made statement that they will make deposit in each Reference before the trial Court as per the modified award passed by the High Court within 3 months from the date of the judgement. It is not in dispute that acquiring body ONGC has not deposited the amount as per the judgement of the High Court and it is also an admitted fact that as per the modified award by the High Court, the compensation is determined, is already deposited by the acquiring body and that amount has already been withdrawn by the petitioners respective claimants.

6. In the matters, which were already notified before us for final hearing, the acquiring body ONGC has filed reply affidavit dealing with the contentions raised in the petitions and it is their contention that ONGC acquiring body has deposited the amount as per the modified award determined by the High Court in First Appeals. The said amount is already deposited and withdrawn by the respective claimants and in view of the fact that subsequent judgement of the Apex Court, in which, the petitioners have placed reliance that they are entitled for the aggregate compensation and interest, is not available to them in view of the fact that when the appeals were disposed off as per the law of the land prevailing in force and it is the contention in the reply that these petitions are not required to be entertained and the same be dismissed.

7. Mr. Kamal Trivedi, learned Additional Advocate General has also in support of his contention contended that there must be some finality of the Award and once the High Court has determined the market value of the land, while disposing off the group of First Appeals at the law prevailing at that time, a subsequent judgement of the Apex Court is not required to be attracted in a situation like those appeals or the proceedings were terminated and it is also his submission that such petition is not required to be entertained.

8. In light of the challenged made before us, one thing is very certain that after the lands of the petitioners were acquired for public purpose namely for ONGC, the Award was declared by the Land Acquisition Officer fixing the price of the land and that award was merged with the award of the High Court, wherein, the Reference Court has partly allowed the Reference in favour of the claimants by enhancing the market value of the land and granted consequential benefits as provided

under the Act. This award of the District Court challenged by the acquiring body in a group of First Appeals and High Court has partly allowed the appeals by reducing the market value of the land fixed by the District Court. It is only thereafter, the petitioners have approached the authority namely the acquiring body ONGC and Land Acquisition Officer by issuing legal notice through advocate in the month of June, 2002 and the contention of the claimants were to the effect by relying upon the subsequent judgement of the Apex Court, wherein, the Supreme Court has granted compensation on aggregate amount that they were entitled for compensation on aggregate amount. The acquiring body as well as Land Acquisition Officer has replied to the said legal notice and the Land Acquisition Officer has under letter dated 24th June, 2002, in term informed that acquiring body has already deposited the amount as per the order of the High Court. However, reply was to the effect that Government has not issued any orders or circular for which, the demand was made and legal notice served by each of the claimants were accordingly replied by the Land Acquisition Officer and the Land Acquisition Officer has informed that he may contact to acquiring body in respect of legal notice.

9. Chief Engineer Shri B.K. Shrivastava (Civil) ONGC, New Delhi, under his letter dated 3rd September, 2002 replied to the legal notice to the advocate that aggregate amount of compensation including the solatium in respect of the acquiring land and as per the award in each land reference case, they have deposited and as there is no Government Resolution for payment of interest on aggregate amount and hence, they have not made payment and the Land Acquisition Officer has already informed you under his letter dated 24th June, 2002.

10. We are not expressing anything on the letters issued by the Land Acquisition Officer as well as by acquiring body ONGC, as reading the letters, it contemplates that if any circular on the basis of the Supreme court judgement is issued, then, they are required to make payment and for this reason, the petitioners have approached this court. We fail to understand that once the finality of the award passed by the High Court in a group of appeals is not challenged either by the acquiring body or by the claimants, so far as that award is concerned, that award become final. We are not expressing anything on the contentions raised in the petitions and the reply affidavit filed on behalf of the acquiring body. We are of the view that these petitions are not required to be entertained by this

court only on the ground that if any claimant has not received the amount as per the award of the High Court or any court, he has to move the Executing Court by highlighting that he is entitled to that amount as per decree and such amount is not paid by the defendants / opponents / acquiring body and the Executing Court is require to determine while disposing off the execution application on considering the contention raised before him by the claimants and acquiring body and the Executing Court is require to dispose off those Execution application in accordance with law. Only on this ground, this court is of the view that this is not a forum, where this court is required to entertain such prayers made by the petitioners, in view of the fact that if any remedy is available, the remedy is available by moving the Executing Court and if any application for Execution will be filed, the Executing Court shall determine the same after considering the case put forward by the parties. In our view, there is no substance in the petitions and all the petitions are disposed off as dismissed. Rule in each matter is discharged. Considering the facts and circumstances of the case, we are of the view that ends of justice will meet by passing no order as to costs and accordingly all the petitions are disposed off with no order as to costs. Registry is directed to place the copy of this order in each matter.

(D.K. Trivedi, J.)

(Sharad D. Dave, J.)
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